UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Neil Zlozower,

Plaintiff,

v.

VICE MEDIA LLC,

Defendant.

Index No. 17-cv-00843(FB)(JO)

ANSWER

Defendant Vice Media LLC ("Vice") hereby states the following for its Answer and Affirmative Defenses (the "Answer") to Plaintiff Neil Zlozower's ("Plaintiff") Complain:

NATURE OF THE ACTION

1. Vice admits that Plaintiff purports to assert a claim under the Copyright Act, but denies that Plaintiff is entitled to any such relief. Vice lacks knowledge or information sufficient to form a belief with respect to the remaining allegations in Paragraph 1.

JURISDICTION AND VENUE

2. Paragraph 2 contains a legal conclusion for which no response is required.

3. Paragraph 3 contains a legal conclusion for which no response is required. Vice further states that it does not contest the Court's jurisdiction.

4. Paragraph 4 contains a legal conclusion for which no response is required. Vice further states that it does not contest venue before this Court.

PARTIES

5. Vice lacks knowledge or information sufficient to form a belief with respect to the allegations in Paragraph 5.

6. Vice states that it is a limited liability corporation organized under the laws of the State of Delaware; that it maintains an office at 49 South 2nd Street, New York, New York 11211; and that it is registered to conduct business in the State of New York as a foreign limited liability corporation. Vice further states that the website at the URL "www.noisey.vice.com" is operated by Vice and/or its agents and affiliates. Except as expressly stated herein, Vice denies the allegations in Paragraph 6.

STATEMENT OF FACTS

A. Background and Plaintiff's Ownership of the Photograph

7. Vice lacks knowledge or information sufficient to form a belief with respect to the allegations in Paragraph 7.

8. Vice lacks knowledge or information sufficient to form a belief with respect to the allegations in Paragraph 8.

9. Vice lacks knowledge or information sufficient to form a belief with respect to the allegations in Paragraph 9.

B. Defendant's Infringing Activities

10. Vice denies the allegations in Paragraph 10, except admits that the article referenced in the Complaint appeared on the website described therein and refers to such article and website for evidence of their content.

11. Vice denies the allegation in Paragraph 11.

CLAIM FOR RELIEF
(COPYRIGHT INFRINGEMENT AGAINST VICE)
(17 U.S.C. §§ 106, 501)

12. Vice incorporates by reference its responses to Paragraphs 1–11.

13. Vice denies the allegations in Paragraph 13.

14. Vice denies the allegations in Paragraph 14.

15. Vice denies the allegations in Paragraph 15.

16. Vice denies the allegations in Paragraph 16.

17. Vice denies the allegations in Paragraph 17.

18. Vice denies the allegation in Paragraph 18.

19. Vice denies the allegations in paragraph 19.

DEFENDANTS' AFFIRMATIVE DEFENSES

Without altering the burden of proof, Vice asserts the defenses set forth below. These defenses are asserted based preliminary investigation of the asserted allegations, which is not yet complete and will remain so pending discovery in this matter. Vice therefore reserves all affirmative defenses under Fed. R. Civ. P. 8(c), and any other defense at law or equity that may now exist or in the future be available based on discovery and further investigation.

FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

1. Plaintiff's claim fails to state a claim upon which relief may be granted.

SECOND AFFIRMATIVE DEFENSE
(Fair Use)

2. Any use by Vice of any copyrightable material owned by Plaintiff was a fair use of such material.

THIRD AFFIRMATIVE DEFENSE
(Standing)

3. Plaintiff lacks standing to bring this action and/or his claims are barred in whole or in part due to the absence of a proper copyright registration covering the allegedly infringed materials.

FOURTH AFFIRMATIVE DEFENSE
(Justification)

4. Vice's actions were justified and/or taken in good faith and were not willful, intentional or purposeful.

WHEREFORE, Defendant Vice Media LLC respectfully request that the Court enter judgment against Plaintiff Glen Plaintiff:

A. Dismissing Plaintiff's Complaint in its entirety with prejudice;

B. Award Defendant its reasonable costs and attorneys' fees; and

C. Award Defendant such other and further relief as the Court deems just and proper.

Dated: March 30, 2017

FRANKFURT KURNIT KLEIN & SELZ P.C.

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